

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DOUGLAS EL,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	
SOUTHEASTERN PENNSYLVANIA	:	
TRANSPORTATION AUTHORITY,	:	NO. 02-CV-3591
Defendant/Third Party Plaintiff	:	
	:	
v.	:	
	:	
KING PARATRANSIT SERVICE, INC., <i>et al.</i> ,	:	
Third Party Defendants	:	JURY TRIAL DEMANDED

**REPLY MEMORANDUM OF LAW OF THIRD PARTY
DEFENDANTS, KING PARATRANSIT SERVICE, INC. AND KING LIMOUSINE
SERVICE, INC., IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

In reply to Defendant, Southeastern Pennsylvania Transportation Authority's (hereinafter "SEPTA") Memorandum of Law in Opposition to the Motion for Summary Judgment of Third Party Defendants, King Paratransit Service, Inc. and King Limousine Service, Inc. (hereinafter "King Third Party Defendants"), and in further support of their said Motion, the King Third Party Defendants respectfully incorporate by reference the arguments and legal authorities contained in the Reply Memorandum of Law of Third Party Defendant, Krapfs CPS, Inc., dated November 13, 2003.

SEPTA does not dispute that a party may not be indemnified for its own intentional acts absent specific and definite language imposing such indemnification liability. There can be no question that SEPTA acted intentionally by mandating in its contracts with its paratransit providers (contracts that SEPTA itself created) that persons with certain criminal convictions be prohibited from paratransit employment. Whether or not SEPTA intended to discriminate is indeed not relevant for purposes of determining the King Third Party Defendants' Motion for Summary Judgment. As

the SEPTA indemnification clause makes no reference at all to intentional conduct, it is insufficient as a matter of law to support SEPTA's claim for relief against the King Third Party Defendants.

Further, SEPTA does not dispute that a party cannot be indemnified for its own violation of public policy. If Plaintiff succeeds on his claim against SEPTA of an alleged illegal employment policy, then SEPTA necessarily will have been determined to have violated the well-settled public policy against such discrimination as defined by Title VII, the Pennsylvania Criminal History Record Information Act, and both the Pennsylvania and United States Constitutions. As no indemnification clause is enforceable for conduct that violates well-settled public policy, the SEPTA indemnification clause is insufficient as a matter of law under these circumstances to support SEPTA's claim for relief against the King Third Party Defendants.

Finally, SEPTA does not dispute that King Limousine Service, Inc. never provided any paratransit services under any contract with SEPTA; that, in fact, King Limousine, with SEPTA's knowledge and consent, assigned any and all of its contractual rights and delegated any and all of its contractual duties to King Paratransit Service, Inc. before providing any such services; and that King Paratransit then provided all services and performed all work under the July 1, 1998 contract between King Limousine and SEPTA. As King Limousine's obligations under its contract with SEPTA ended more than three and a half (3½) years before the incidents alleged by Plaintiff, the SEPTA indemnification clause is insufficient as a matter of law under these circumstances to support SEPTA's claim for relief against King Limousine.

Accordingly, Third Party Defendants King Paratransit Service, Inc. and King Limousine Service, Inc. respectfully submit that they are entitled to summary judgment in this case

and therefore respectfully request that this Honorable Court grant summary judgment in their favor and against SEPTA, dismissing SEPTA's Third Party Complaint, with prejudice.

Respectfully submitted,

Date: November 21, 2003

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